

Bail Slip

The Appellant/Accused namely Sumaiya (A2) W/O.Ibrahim was directed to be released on bail as per order of this Court dated 01/06/2015 in Crl M.P.No. 1 of 2015 in Crl A 682 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 27..04..2016
Judgement Pronounced on : 08..06..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.682 of 2013

Sumaiya [A2]

... Appellant

-Versus-

State Rep. by Inspector of Police,
Tirupur Rural Police Station,
Tirupur District.
[Crime No.4466 of 2011]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned I Additional Sessions Judge, Tirupur, Tirupur District, in S.C.No.77 of 2012 dated 30.09.2013.

For Appellant : Mr.S.Elango

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

S.NAGAMUTHU.J.,

The appellant is the 2nd Accused in S.C.No.77 of 2012 on the file of the learned I Additional Sessions Judge, Tirupur. The 1st Accused is one Mr.Ibrahim. The 1st Accused is the husband of the 2nd Accused. Both the accused stood charged for offences under Sections 365, 302 and 392 of IPC. By judgment dated 30.09.2013, the trial court convicted both A1 and A2 under all three charges and sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-

each in default to suffer rigorous imprisonment for one year for offence under Section 365 of IPC; to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each in default to suffer rigorous imprisonment for one year for offence under Section 392 of IPC; and to undergo imprisonment for life and to pay a fine of Rs.5,000/- each in default to suffer rigorous imprisonment for one year for offence under Section 302 of IPC. Challenging the above said convictions and sentences, A2 has come forward with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Angaiyarkanni. She was running a Beauty Parlor under the name and style "Ajantha Beauty Parlor" in Tirupur. She was already married. But, her husband was residing in Namakkal. The deceased was residing with her parents at Dharapuram Road, Tirupur. P.W.1 is the father and P.W.3 is the mother of the deceased.

3. On 06.11.2011 at about 12.00 noon, a man and a woman came in a motor cycle bearing Regn. No.TN 39 V 7165. The woman was in parda. [The said man and the woman have been later on identified as A1 and A2] A1 inquired with P.W.1 as to where the deceased was. A1 disclosed his name as "Ibrahim" and his wife accompanying him as "Sumaiya". When P.W.1 responded, A1 told him that they had come to take the deceased to their house to put make-up for a friend of A2. P.W.1 told that the deceased had gone else where and it would take some time for her to return. Therefore, both A1 and A2 left in the same motorcycle. Within an hour and a half thereafter, both A1 and A2 returned in the same motor cycle. This time, the deceased had already come. They spoke to the deceased and took the deceased with them. A1 and A2 proceeded in their motor cycle followed by the deceased in her motor cycle bearing Regn. No.TN 29 AD 4515. When the deceased left, she was wearing a gold thali chain with thali and a gold chain and also a pair of ear studs. She was also having her mobile phone.

4. Within forty-five minutes to one hour thereafter, from the mobile phone of the deceased a call came to the mobile phone of P.W.1. He picked up his mobile phone and responded to the call. He heard a male voice from the other end. At that time, the person from the other end [Later on identified as P.W.2] told that the mobile phone was held by a woman who was lying with injuries and she was trying to contact the mobile number of P.W.1. He further told that he took up the mobile phone and he found that outgoing call was in progress. He further told that the woman was lying at V.S.A. Nagar in front of the house of A1 in a serious condition with cut injuries all over her body. P.Ws.1 and 3 immediately rushed to the said place. Since they were not aware of the place of occurrence, by making inquiry,

with great difficulty, at last, they reached V.S.A. Nagar and then the place of occurrence. They found the deceased lying just at the entrance of the house of A1 with cut injuries. Her two fingers had been severed and they were not seen. Immediately, P.Ws.1 and 3 contacted "108 Ambulance service" and with the help of the Ambulance, they took the deceased to Tirupur Government Hospital where the Doctor, on examining the deceased, declared her dead.

5. Thereafter, P.W.1 went to Tirupur Rural Police Station and made a complaint. P.W.15, the Special Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.4466 of 2011 under Section 365, 392 and 302 of IPC at 06.30 p.m. Ex.P.10 is the FIR. He forwarded both Ex.P.1-complaint and Ex.P.10-FIR to the court which were received by the jurisdictional Magistrate at 08.00 p.m. on 06.11.2011. In the mean time, P.W.15 handed over the case diary to the Inspector of Police for investigation.

6. The case was taken up for investigation by P.W.18. He went to the place of occurrence at 07.00 p.m. on 06.11.2011 and in the presence of P.W.9 and P.W.19, he prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.15) at the place of occurrence. The motor cycle belonged to the deceased was found just in front of the house of A1. In the bed room and the other places of the house of A1, blood stains were found. Two severed fingers of the deceased were found in the bed room. The belongings of the deceased were also found inside the house. He recovered all the above material objects from the house including the blood stained tiles and ordinary tiles and the motor cycle which was found parked just in front of the house of A1, in the presence of the same witnesses under a mahazar (Ex.P.3). Then, he conducted inquest on the body of the deceased at the hospital in the presence of the panchayatars between 09.00 p.m. and 12.00 midnight on 06.11.2011 at Tirupur Government Hospital and prepared an inquest report (Ex.P.16). Thereafter, he forwarded the body for postmortem.

7. P.W.12 Dr.Suganyadevi, an Assistant Surgeon, at Government Head Quarters Hospital, Tirupur, conducted autopsy on the body of the deceased at 10.45 a.m. on 07.11.2011 and found the following injuries on the body of the deceased:-

"External Injuries:

(1) Well defined Linear cut injury over front of the neck seen which is about 7 cms from chin, 10 cms from left ear lobe, 10 cms from right ear lobe measuring 5 x 3 x 3 cm exposing cut ends of blood vessels and the trachea partially cut ends seen.

(2) 1 cm lateral to injury No.1 on left side, a cut injury of about 1.5 x 0.5 x 1 cm seen with regular margins and sharp edges.

(3) Well defined cut injury 5 x 1 x 2 cms seen over right side of neck which is 5 cms below right ear lobe with the medial end of the injury having the depth of 3 cms exposing blood vessels cut ends.

(4) Well defined cut injury over middle of right cheek 6 x 3 x 1 cms with the medial end of the injury having the depth of 2 cms exposing muscles and blood vessels cut ends and darkish red clots seen around the injury.

(5) Well defined cut injury in the lower occipital region which extends up to right ear lobe about 7 x 2 x 1 cms exposing skull bone and darkish red dots seen around the injury.

(6) Well defined cut injury over right temporal region 6 x 2 x 1 cms and 2 cms below injury No.6, 4 x 1 x 1 cm cut injury seen.

(7) Abrasion injury 9 x 2 cms seen over right shoulder joint and abrasion injury 2 x 2 cm below injury No.3 seen.

(8) 1/3 rd of right middle finger and 2/3rd of right index finger amputated cut injury over right hand dorsum 5 x 1/2 x 1/2 cm seen. cut injury over right hand dorsal aspect 3 x 1/2 x 1/2 cm seen.

(9) Cut injury over middle third of all the fingers except thumb on left side 1 x 1/2 x 1/4 cm seen. Cut injury over right thumb 1 x 1/2 x 1/4 cm seen.

All injuries are antemortem in nature.

Eyelids partially opened. Mouth and Lips partially opened. Tongue kept inside the mouth. Ears - No discharge. Nose - No discharge. Opening of Thorax: Ribs -

intact. Heart wt: 300 grams Chambers - Empty. Lungs pale. Right wt. 400 grams and left 350 grams. Hyoid bone - Intact. Stomach contains 100 ml of partially digested food particles. Liver pale, wt. 1400 grams. Spleen pale wt. 110 grams. Kidneys: each wt. 150 grams. Intestines - distended with gas. Bladder - Empty. Uterus - Normal in size. Genedictive organs normal. Extenal genitalia appears normal. Opening of the Head: Fracture of Occipital Bone seen. Membranes intact. Brain - Pale wt. 1400 grams.

She persevered the visceral organs of the deceased for chemical analysis. Ex.P.8 is the postmortem certificate. After having received the chemical analysis report, she opined that the death was due to shock and haemorrhage due to multiple injuries to vital organs namely, trachea and major blood vessels. She further opined that the injuries noticed on the body of the deceased could have been caused by a weapon like aruval (M.O.11). Ex.P.9 is her final opinion regarding the cause for the death.

8. After the postmortem was over, P.W.18, the investigating officer, recovered the blood stained clothes from the body of the deceased. P.W.18 examined few more witnesses and recorded their statements.

9. In the course of investigation, on 07.11.2011 at 12.00 noon at Kangeyam - Tirupur Road at Rakkipalayam branch road, P.W.18 arrested A1 and A2 together in the presence of P.W.10 and P.W.20. On such arrest, A1 gave a voluntary confession in which he disclosed the place where he had hidden the motor cycle, gold jewels, blood stained clothes and aruval. A2 also gave a voluntary confession, but no fact was discovered from out of the same. In pursuance of his confession, A1 took P.W.18 and the witnesses to the house of his sister Mrs.Ayisha at K.N.S. Subramaniam Nagar, Tirupur and produced the motor cycle bearing Regn. No. TN 39 V 7165 (M.O.1), gold Thali chain (M.O.3), gold chain (M.O.4), a pair of gold ear stud (M.O.5), aruval (M.O.11), blood stained shirt (M.O.12) and blood stained pants (M.O.13). On returning to the police station, he forwarded both the accused to the court for judicial remand. He also forwarded the material objects to the court with a request for chemical analysis. On completing the investigation, he laid the final report against the accused.

10. Based on the above materials, the trial court framed as many as three charges as detailed in the first paragraph of this judgement. Both A1 and A2 denied the same. In order to

prove the same, on the side of the prosecution, as many as 20 witnesses were examined, 17 documents and 14 materials objects were marked.

11. Out of the said witnesses, P.Ws.1 and 3 are the father and mother respectively of the deceased. They have stated about the inquiries made by A1 and A2 about the deceased at their house and the deceased leaving in her motor cycle lastly along with A1 and A2, who left in their motor cycle. They have further stated that they have received a phone call from the mobile phone of the deceased at about 01.00 p.m. P.W.2 spoke over phone and when they reached the place of occurrence, they found the deceased lying with cut injuries and the jewels worn by her were found missing. P.Ws.1 and 3 took the deceased with the help of 108 Ambulance service to Tirupur Government Hospital where the deceased was declared dead by a Doctor.

12. Thereafter, according to P.Ws.1 and 3, P.W.1 went to the police station and preferred a complaint. They have identified M.Os.2, 3, 4, 5 6, 7 and 8 belonged to the deceased. P.W.2 is an important witness for the prosecution. He has stated that when he was passing through the place of occurrence, he found the deceased lying at the entrance of the house of A1 and the deceased was trying to contact somebody through her mobile phone. When the deceased was struggling with a view to help her P.W.2 took the mobile phone of the deceased and found that an outgoing call was in progress. According to P.W.2, when he enquired, P.W.1, who was on the other end, responded to the said call. P.W.2 has further stated that he told P.W.1 that the deceased was lying with cut injuries at V.S.A. Nagar, Tirupur and he also told him that the deceased was struggling to contact through her mobile bone and with a view to help the deceased, he took the mobile phone and found that the call was in progress. On receiving the intimation, P.Ws.1 and 3 rushed to the place of occurrence. Then, with the help of the people, the deceased was taken in "108 Ambulance service" to Tirupur Government Hospital.

13. P.W.4 is the neighbour of P.W.1. He has also stated about the arrival of the accused to the house of P.W.1 inquiring about the deceased and later taking her in her motor cycle. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 is the landlord of the house where A1 and A2 were residing as husband and wife. According to him, on the day of occurrence, he was elsewhere busy with his work. He received an information that there had occurred an incident at his house rented out to the accused. When he rushed to the place of occurrence, he found blood stains inside the house, but the deceased had already been taken to the hospital. P.W.7 has stated that on 06.11.2012, there was a function at his house in connection with his daughter attaining

puberty. The deceased was there at his house between 10.45 a.m. and 11.45 a.m. putting make-up to the girl. Thereafter, even without taking food at his house, she left informing P.W.7 at 11.45 p.m. that she had work elsewhere. P.W.8 is the landlord of the house where the sister of A1 was residing as a tenant. He has stated that often he had seen both A1 and A2 visiting the house of Mrs.Ayisha. He has stated that Mrs.Ayisha told him on few occasions that A1 was in dire need of money for treatment.

14. P.W.9 and P.W.19 have spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and the recovery of material objects. P.W.10 and P.W.20 have spoken about the arrest of A1 and A2 and the consequential recovery of the material objects based on the disclosure statement of A1. P.W.11 has turned hostile and he has not supported the case of the prosecution in any manner.

15. P.W.12-Doctor has spoken about the autopsy conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.13, the Police Constable, has stated that he received the intimation from Tirupur Government Hospital at 02.30 p.m. on 06.11.2011 about the death of the deceased. He informed the same to his superiors. P.W.14 has stated that he took the dead body of the deceased and handed over the same to the Doctor at Tirupur Government Hospital, for postmortem.

16. P.W.15, the then Special Sub Inspector of Police, has stated about the registration of the FIR based on the complaint made by P.W.1 at 06.30 p.m. on 06.11.2011. P.W.16 was the Duty Doctor at Revathy Hospital, Tirupur. According to him, at 03.00 p.m. on 06.11.2011 the deceased was brought before him for treatment and he advised her to be taken to the Government Hospital. P.W.17 has stated that at 02.10 p.m. on 06.11.2011 when he was in the Tirupur Government Hospital, the deceased was brought before him by her father. He examined the deceased and found a number of cut injuries on her body. He declared the deceased dead. P.W.18 has spoken about the entire investigation done by him and the filing of final report against the accused.

17. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same. However, they did not choose to examine any witness on their side nor did they mark any document. Their defence was a total denial. According to the appellant/A2, on account of some misunderstandings between herself and A1, she left for her parents home in Kerala and on the day of occurrence she was not present at the house of A1.

18. Having considered all the above, the trial court convicted both the accused under sections 365, 392 and 302 of IPC and accordingly punished them as detailed in the first

paragraph of this judgment. That is how, A2 is now before this court with this criminal appeal. It appears that A1 has not preferred any appeal challenging the conviction and sentence imposed on him by the trial court.

19. We have heard the learned counsel for the appellant/A2 and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

20. This is a case based on circumstantial evidence. According to the prosecution, on 06.11.2011 between 11.00 a.m. to 12.00 noon, both A1 and A2 came in a motor cycle introducing themselves as "Ibrahim" and "Mrs.Sumaiya" and told P.W.1 to be heard by P.Ws.3 and 4 that they had come to engage the deceased to take her to the house of a friend of A2 for putting make-up to her friend. It is the case of the prosecution that A1 and A2 had decided to do away with the deceased in order to commit robbery of the gold jewels belonging to her. Had it been true that these two accused had so planned to commit the murder of the deceased that too by taking her under the guise of engaging her for putting make-up, certainly, they would not have disclosed their identity, more particularly, their names to P.Ws.1, 3 and 4. This part of the story projected by the prosecution, in our considered view, is highly doubtful.

21. The occurrence had taken place inside the house of A1. There were blood stains found inside the house of the deceased and two fingers of the deceased which were amputated were also found in the bed room of A1. The personal belongings of the deceased like materials for make-up were also found in a hand bag inside the bed room of A1. Thus, it is crystal clear that the occurrence had taken place inside the bed room of the house of A1. Had it been true that A1 and A2 had planned to commit the murder of the deceased in order to commit robbery of the gold jewels belonging to the deceased, they would not have chosen to take her to the house of A1 to commit murder inside the house. Therefore, it is highly unbelievable, the reason being that had it been true that they had planned to commit the murder of the deceased, they would have taken the deceased elsewhere to a lonely place and committed murder. They would not have taken the deceased to their house to commit murder leaving blood stains and all other evidences in the house. Therefore, the story propounded by the prosecution that both A1 and A2 had come to the house of the deceased and took her to their house cannot be believed.

22. The learned Additional Public Prosecutor would submit that in Ex.P.1, itself all the above facts have been stated. He would also add that had it been true that these two accused had not so come to the house of P.W.1, their names would not have come to be mentioned in Ex.P.1. The very fact that the names of

A1 and A2 had been mentioned in Ex.P.1, according to the learned Additional Public Prosecutor, would go to indicate that A1 and A2 alone had disclosed their identity to P.Ws.1, 3 and 4 at the time when they had gone to the house of P.W.1.

23. Per contra, the learned counsel appearing for the appellant would take us through the evidence of P.W.3 wherein during cross examination, P.W.3 has stated that around 07.00 p.m. on 06.11.2011 both A1 and A2 were kept in the police station and he himself and P.W.1 identified them in the police station. There is no explanation from the prosecution as to how these two accused were in the police station at 07.00 p.m. on 06.11.2011. Though it is alleged that the FIR was registered at 06.30 p.m. on 06.11.2011, it has reached the hands of the learned jurisdictional Magistrate only at 08.30 p.m. on 06.11.2011. From this, the learned counsel for the appellant would submit that only after securing both A1 and A2, the FIR has been fabricated. We find force in the said argument. Absolutely, there is no explanation as to why there was such a huge delay in registering the case. P.W.13, the Police Constable attached to the respondent police has stated that at 02.30p.m. on 06.11.2011, he received information from the hospital about the fact that the deceased was brought to the hospital and she had been declared dead. He has further stated that he immediately informed this to his superiors. Even then, according to the prosecution, the case was registered only at 06.30 p.m. after the arrival of P.W.1 to the police Station. There is no explanation as to why there was such a huge delay in registering the FIR and also in forwarding the same to the court. In the light of the above said fact, we find force in the argument advanced by the learned counsel for the appellant that only after securing both A1 and A2 and keeping them in their custody at 07.00 p.m. as spoken by P.W.3, the FIR has been prepared. Therefore, we are not prepared to give any weightage for the mentioning of names of A1 and A2 in the FIR itself. We have no hesitation to hold that the FIR is a fabricated document and, therefore, no weightage could be attached to the same.

24. If once it is held that the story of the prosecution that the appellant /A2 had accompanied A1 to the house of the deceased and brought the deceased to the house of A1 is unbelievable, we find no other evidence against the appellant/A2. There is no other evidence even remotely connecting the appellant/A2 with the crime. Though it is alleged that she had given confession to the police, no fact was discovered from out of the same. All the material objects were recovered only as a result of the disclosure statement allegedly made by A1 from the house of the sister of A1. Thus, absolutely, there is no evidence against the appellant though there is evidence against A1.

25. So far as the place of occurrence is concerned , it has been clearly established that it was only in the house of A1. The deceased was lying just in front of the house of A1. According to P.W.2, she was found struggling to contact somebody from her mobile phone and with a view to help her, he took up the mobile phone and on seeing that there was an outgoing call in progress, he inquired as to who was on the other end. That is how, he informed P.W.1 about the occurrence which brought P.Ws.1, 3 and others to the place of occurrence and thereafter, the deceased was rushed to the hospital. But, A1 was not found anywhere near the scene of occurrence. The appellant has stated that on account of some misunderstanding with A1, she had left for her parental home in Kerala and during the relevant point of time she was at her parental home in Kerala. Nobody had seen A2 anywhere near the house or at the house on the day of occurrence or one or two days even before the occurrence. According to the landlord (P.W.7), the house was rented out to A1. It is inferable that for some reason or other, the deceased had come to the house of A1 and the deceased and A1 were in the bedroom of the house of A1 and for the reasons not investigated, A1 had cut her and when she ran out of the house, A1 had left the house

26. The alleged recovery of gold jewels belonging to the deceased from the possession of A1 would go to prove his involvement in the crime. But, we hasten to add that these observations which we make against A1 cannot be construed as a final adjudication about the involvement of A1 in the crime inasmuch as in the absence of A1 and without affording any opportunity to him, we cannot give any finding regarding the guilt of A1. These observations which we have made hereinabove are only for the purpose of justifying our conclusion that A2 had nothing to do with the death of the deceased or missing of the personal belongings of the deceased. We only hold that the prosecution has not proved the guilt of the appellant/A2. We do not express any opinion as to whether the prosecution has proved the guilt of A1 or not.

27. In a case based on circumstantial evidence, it is for the prosecution to prove all the circumstances projected by it beyond all reasonable doubts and such proved circumstances should form a complete chain without any missing link so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Here in the instant case, we find that the prosecution has not proved any incriminating circumstance as against the appellant/A2 and therefore, we cannot sustain the conviction and sentence imposed on the appellant based on mere suspicion. Therefore, we are impelled to acquit the appellant/A2.

28. In the result, the criminal appeal is allowed. The conviction and the sentences imposed on the appellant/A2-Mrs.Sumaiya are hereby set aside and she is acquitted from all the charges. Fine amount paid, if any, shall be refunded to her. Her bail bonds shall stand terminated.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional Sessions Judge,
Tirupur,
Tirupur District.

2.The Judicial Magistrate No.II,
Tiruppur.

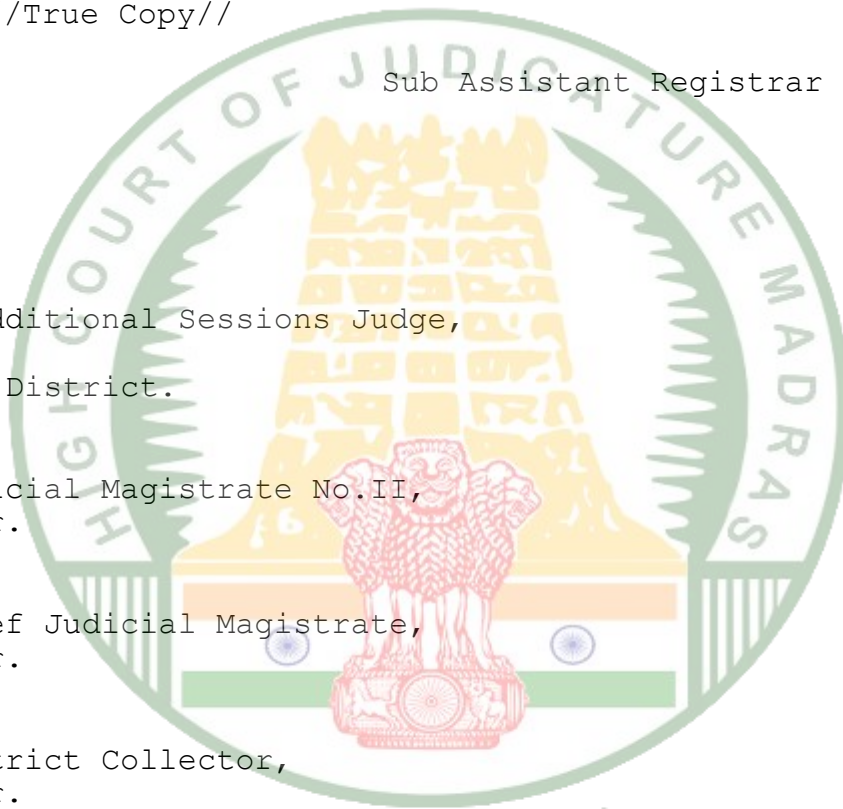
3.The Chief Judicial Magistrate,
Tiruppur.

4.The District Collector,
Tiruppur.

5.The Director General of Police,
Mylapore, Chennai.

6.The Superintendent,
Central Prison,
Vellore.

7.The Inspector of Police,
Tirupur Rural Police Station,
Tirupur District.



WEB COPY

8.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section(Records),
High Court, Madras.

Criminal Appeal No.682 of 2013

ad[co]
srg 30/06/2016



WEB COPY